

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

GENERAL MOTORS LLC

CASE 07-CA-053570

and

MICHAEL ANTHONY HENSON, AN INDIVIDUAL

**RESPONDENT GENERAL MOTORS LLC'S EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Respondent, GENERAL MOTORS LLC ("GM" or "Respondent"), files the following exceptions to the May 30, 2012 Decision and Order (JD-27-12) (the "ALJD") issued by Administrative Law Judge Ira Sandron (the "ALJ") in the above-referenced unfair labor practice case, pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), and in support states as follows:

EXCEPTION NO. 1

Respondent excepts to the ALJ's characterization of the issue in the case insofar as the ALJ defines the issue as whether "portions" of GM's Social Media Policy are facially overbroad and violate Section 8(a)(1) of the National Labor Relations Act ("NLRA" or "Act") (ALJD, p. 1, lines 9-12). In so doing, the ALJ erroneously evaluated whether GM's Social Media Policy was overbroad and unlawful by reading particular phrases in isolation, out of context, rather than considering the Policy as a whole.

EXCEPTION NO. 2

Respondent excepts to the ALJ's application of legal standards under Section 8(a)(1) of the Act to GM's Social Media Policy. (ALJD, p. 4, lines 24-30). Counsel for the Acting General Counsel presented no evidence whatsoever establishing that GM's Social Media Policy would interfere with the exercise of such rights.

EXCEPTION NO. 3

Respondent excepts to the ALJ's conclusion that the Counsel for the Acting General Counsel is not required to establish any unlawful motive in order to establish a violation of Section 8(a)(1) of the Act. (ALJD, p. 4, lines 32-34). The ALJ's failure to consider GM's legitimate business reasons for the promulgation of the Social Media Policy was clearly erroneous.

EXCEPTION NO. 4

Respondent excepts to the ALJ's evaluation of certain "portions" of GM's Social Media Policy (e.g., "Use of Good Judgment About What You Share and How You Share") in isolation in determining whether the Policy is overbroad and violative of Section 8(a)(1) of the Act. (ALJD, p. 5, lines 6-15). In so doing, the ALJ applied an erroneous legal standard.

EXCEPTION NO. 5

Respondent excepts to the ALJ's conclusion that several aspects of GM's Social Media Policy (e.g., "Use of Good Judgment About What You Share and How You Share") raise concerns about interference with employees' Section 7 rights. (ALJD, p. 5, lines 14-15). The NLRB has not recognized any protected Section 7 right for employees to communicate using social media. Moreover, Counsel for the Acting General Counsel presented no evidence whatsoever that GM's Social Media Policy would interfere with the exercise of Section 7 rights.

EXCEPTION NO. 6

Respondent excepts to the ALJ's conclusion that confidentiality policies "may chill employees' exercise of protected activities." (ALJD, p. 5, lines 17-31). The provisions in GM's Social Media Policy pertaining to protection of confidential information are based upon legitimate business and legal considerations and do not infringe on employees' Section 7 rights.

EXCEPTION NO. 7

Respondent excepts to the ALJ's conclusion that certain language in GM's Social Media Policy (e.g., "Use of Good Judgment About What You Share and How You Share") would be "reasonably read" by employees as "prohibiting protected employee communications about terms and conditions of employment, because it expressly prohibits employees from discussing online

workers' wages and other compensation as well as working conditions.” (ALJD, p. 5, lines 33-37).

The NLRB has not recognized any protected Section 7 right for employees to communicate using social media. Moreover, Counsel for the Acting General Counsel presented no evidence whatsoever establishing that GM's Social Media Policy would interfere with the exercise of Section 7 Rights. Further, the evidence adduced at the March 15, 2012 hearing did not establish that GM employees are prohibited from discussing wages or other working conditions with other employees on-line.

EXCEPTION NO. 8

Respondent excepts to the ALJ's conclusion that certain language in GM's Social Media Policy (e.g., “Use of Good Judgment About What You Share and How You Share”) imposes an unlawful restriction on employees' Section 7 rights because it requires that social media posts must be “completely accurate” and “not misleading.” (ALJD, p. 5, lines 39-46). Requiring employees to post accurate information in social media communications does not infringe on their Section 7 rights. Further, these requirements are based upon legitimate business and legal considerations.

EXCEPTION NO. 9

Respondent excepts to the ALJ's conclusion that certain language in GM's Social Media Policy (e.g., “Use of Good Judgment About What You Share and How You Share”) imposes an unlawful restriction on employees' Section 7 rights because it directs employees to check with the company if they are in doubt about whether their communications violate the Policy. (ALJD, p. 6, lines 1-5). This recommendation set forth in the Policy is based upon legitimate business and legal considerations and does not infringe on employees' Section 7 rights.

EXCEPTION NO. 10

Respondent excepts to the ALJ's conclusion that certain language in GM's Social Media Policy (e.g., “Use of Good Judgment About What You Share and How You Share”) imposes an unlawful restriction on employees' Section 7 rights because it prohibits employees from using photos, music, video, quotes or personal information in on-line communications without permission from the owner or author of such materials. (ALJD, p. 6, lines 7-13). These restrictions set forth in

the Policy are based upon legitimate business and legal considerations and do not infringe on employees' Section 7 rights.

EXCEPTION NO. 11

Respondent excepts to the ALJ's conclusion that certain language in GM's Social Media Policy (e.g., "Use of Good Judgment About What You Share and How You Share") imposes an unlawful restriction on employees' Section 7 rights because the ALJ erroneously applied the Board's ruling in Labinal, 2003 WL 21466432 (2004) in reaching this conclusion. (ALJD, p. 6, lines 15-19). This unreviewed ALJ decision does not constitute valid precedent and is completely inapposite to the issues in this case.

EXCEPTION NO. 12

Respondent excepts to the ALJ's conclusion that certain language in GM's Social Media Policy (e.g., "Use of Good Judgment About What You Share and How You Share") violates Section 8(a)(1) of the Act. (ALJD, p. 6, lines 21-22). In reaching this conclusion, the ALJ applied erroneous legal standards. The NLRB has not recognized any protected Section 7 right to communicate utilizing social media. Further, the ALJ erroneously read particular phrases in GM's Social Media Policy in isolation, out of context, rather than considering the policy as a whole. In addition, the ALJ's conclusion is inconsistent with the undisputed facts adduced at the March 15, 2012 hearing because Counsel for the Acting General Counsel presented no evidence whatsoever establishing that GM's Social Media Policy would interfere with the exercise of Section 7 rights.

EXCEPTION NO. 13

Respondent excepts to the ALJ's conclusion that disclaimer language in GM's Social Media Policy does not ameliorate any potential infringement on employees' Section 7 rights. (ALJD, p. 9, lines 29-42). The inclusion of such language is expressly designed to advise employees that their rights to engage in activities protected by the NLRA are not implicated by the Social Media Policy. Under such circumstances, no reasonable employee could read GM's Social Media Policy as interfering with his/her Section 7 rights.

EXCEPTION NO. 14

Respondent excepts to the ALJ's conclusion that GM's employees "cannot be expected to know what conduct is protected under the Act." (ALJD, p. 9, lines 44-46). The evidence adduced at the March 15, 2012 hearing established that the substantial majority of GM's employees who are covered by the NLRA are represented by labor organizations and are well aware of their Section 7 rights. The ALJ's unsupported, speculative conclusion that these employees cannot be expected to understand their statutory rights is clearly erroneous.

EXCEPTION NO. 15

Respondent excepts to the ALJ's conclusion that disclaimer language in GM's Social Media Policy does not ameliorate any potential infringement on employees' Section 7 rights. (ALJD, p. 10, lines 1-2). The inclusion of such language is expressly designed to advise employees that their rights to engage in activities protected by the NLRA are not implicated by the Social Media Policy. Under such circumstances, this disclaimer language cures any potential ambiguities regarding interference with employees' Section 7 rights.

EXCEPTION NO. 16

Respondent excepts to the ALJ's conclusions that GM employees are unaware of the Company's expectations with respect to social media activity, that "employees will be discouraged from engaging in protected activity" by GM's Social Media Policy, and that prefatory language regarding the application and enforcement of the Policy are insufficient to cure any perceived defects in the Policy. (ALJD, p. 10, lines 4-11). Counsel for the Acting General Counsel presented no evidence whatsoever establishing any confusion on the part of GM employees with respect to the company's expectations pertaining to social media use or any actual discouragement of Section 7 activity. Accordingly, the ALJ's conclusion is wholly speculative and unsupported by any record evidence.

EXCEPTION NO. 17

Respondent excepts to the ALJ's conclusion that certain provisions in GM's Social Media Policy violate Section 8(a)(1) of the Act. (ALJD, p. 10, lines 17-42). In reaching this conclusion, the ALJ applied erroneous legal standards. The NLRB has not recognized any protected Section 7 right to communicate utilizing social media. Further, the ALJ erroneously read particular phrases in the Policy in isolation, out of context, rather than considering the policy as a whole. In addition, the ALJ's conclusion is inconsistent with the undisputed facts adduced at the March 15, 2012 hearing because Counsel for the Acting General Counsel presented no evidence whatsoever establishing that GM employees utilize social media to engage in Section 7 activities or that GM's Social Media Policy would interfere with the exercise of such rights.

EXCEPTION NO. 18

Respondent excepts to the remedy ordered by ALJ because his conclusion that GM committed certain unfair labor practices is not supported by record evidence and is clearly erroneous. (ALJD, p. 11, lines 3-5).

EXCEPTION NO. 19

Respondent excepts to the remedy ordered by the ALJ because it is vague and ambiguous insofar as it does not describe the activities to be enjoined with sufficient specificity and does not provide GM with adequate notice of its legal obligations for compliance purposes. (ALJD, p. 11, lines 7-13).

EXCEPTION NO. 20

Respondent excepts to the remedy ordered by the ALJ insofar as the remedial order requires GM to rescind any disciplinary action under the Social Media Policy and payment of back pay to alleged discriminatees because Counsel for the Acting General Counsel presented no evidence whatsoever that any GM employee has been subjected to discipline under the Social Media Policy for engaging in any activities protected by Section 7 of the Act. (ALJD, p. 11, lines 15-23). Further, Counsel for the General Counsel made no such allegations in the Complaint.

EXCEPTION NO. 21

Respondent excepts to the ALJ's proposed order because his conclusion that GM committed certain unfair labor practices is not supported by record evidence and is clearly erroneous; because the order is vague and ambiguous insofar as it does not describe the activities to be enjoined with sufficient specificity and does not provide GM with adequate notice of its legal obligations for compliance purposes; and because Counsel for the Acting General Counsel presented no evidence whatsoever that any GM employee has been subjected to discipline under the Social Media Policy for engaging in any activities protected by Section 7 of the Act. (ALJD, p. 11, lines 30-41; p. 12, lines 1-41).

EXCEPTION NO. 22

Respondent excepts to the ALJ's proposed notice because his conclusion that GM committed certain unfair labor practices is not supported by record evidence and is clearly erroneous; because the notice is vague and ambiguous insofar as it does not describe the activities to be enjoined with sufficient specificity and does not provide GM with adequate notice of its legal obligations for compliance purposes; and because Counsel for the Acting General Counsel presented no evidence whatsoever that any GM employee has been subjected to discipline under the Social Media Policy for engaging in any activities protected by Section 7 of the Act. (ALJD, p. 11, lines 30-41; p. 12, lines 1-41).

Respectfully submitted,

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